

STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY

WINNEBAGO APARTMENT  
ASSOCIATION, INC.  
P.O. Box 3173  
Oshkosh, WI 54903,

DISCOVERY PROPERTIES, LLC  
230 Ohio Street  
Oshkosh, WI 54902,

MIDWEST REALTY MANAGEMENT,  
INC.  
2990 Universal Street  
Oshkosh, WI 54904,

SCHWAB PROPERTIES, LLC  
601 Oregon Street  
Oshkosh, WI 54902,

ULTIMATE PROPERTIES, LLC  
P.O. Box 190  
Winneconne, WI 54968,

DONN LORD  
743 West 10th Avenue  
Oshkosh, WI 54902,

JORDAN HANSEN  
1105 Wisconsin Street  
Oshkosh, WI 54901,

LYN KOLF  
619A East Parkway Avenue  
Oshkosh, WI 54901,

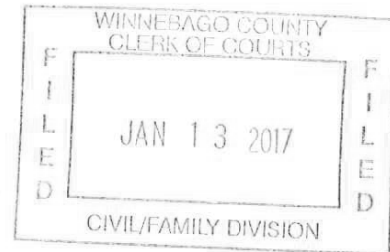
ALEX OBERTHALER  
1115 Elmwood Avenue  
Oshkosh, WI 54901,

and

AUSTIN VIKE  
813 Scott Avenue  
Oshkosh, WI 54901,

17CV00046BR4

Case No. \_\_\_\_\_  
Case Code: 30701, 30704



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Plaintiffs,

v.

CITY OF OSHKOSH  
215 Church Avenue  
Oshkosh, WI 54903,

CITY OF OSHKOSH COMMON COUNCIL  
215 Church Avenue  
Oshkosh, WI 54903,

and

JOHN ZARATE, in his official capacity as  
the City of Oshkosh Chief Building Official  
215 Church Avenue  
Oshkosh, WI 54903,

Defendants.

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**AFFIDAVIT OF DONN LORD IN SUPPORT OF PLAINTIFFS' MOTION FOR  
TEMPORARY INJUNCTION**

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STATE OF WISCONSIN     )  
                                      ) ss.  
WINNEBAGO COUNTY     )

Donn Lord, being first duly sworn, on oath, deposes and states as follows:

1. I am an adult resident of the State of Wisconsin. I am making this affidavit based on personal knowledge.
2. At issue in this case is an ordinance enacted by Defendants on September 15, 2016 establishing a program for the registration and inspection of residential rental dwelling units. It is my understanding that Defendants began implementing and enforcing the inspection program authorized by the ordinance as of January 1, 2017.

3. Plaintiffs are apartment owners and tenants in the City of Oshkosh who own or rent property subject to the inspection ordinance. I am a landlord owning property in the City of Oshkosh and I am a member of Winnebago Apartment Association, Inc. (the "Association").

4. On June 28, 2016, the Common Council introduced a proposed ordinance establishing a program for the registration and inspection of residential rental dwelling units in the City.

5. Following the introduction of the proposed ordinance, the Association engaged in multiple discussions with the City in an attempt to address and correct what we believe are violations of state law and federal constitutional rights and protections of residential rental dwelling unit owners and residents in the proposed ordinance.

6. Despite the efforts of the Association, on September 15, 2016 the Common Council approved the ordinance, which was adopted as Sections 16-47-16-51 of Division 6 of the City Ordinances. The Residential Rental Contact Registration and Inspection Program (the "Inspection Program" or the "Ordinance") authorizes the Oshkosh Inspection Services Division (the "Division") and the Chief Building Official to implement a program for inspections of residential rental dwelling units. (Exhibit A).

7. The Ordinance allows the City to inspect all rental properties in the City, with or without cause. These searches are to be conducted by City staff with an unspecified fee assessed on the owner of the residential rental dwelling unit regardless of whether City inspectors are able to gain access and actually conduct an inspection in the dwelling unit.

8. The Ordinance does not require City inspectors to obtain an inspection warrant before conducting inspections or to inform owners or residents of their rights to deny entry to the City inspector without cause.

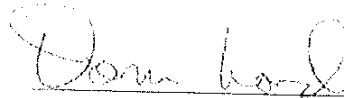
9. The Ordinance requires that each property owner file a residential rental contact informational form with the Division each year, and also requires that all residential rental dwelling units be registered with the Division prior to tenant occupancy.

10. The Ordinance does not include any safeguards to assure that the Ordinance and any inspections conducted pursuant thereto will comply with federal and state law. Specifically, it does not:

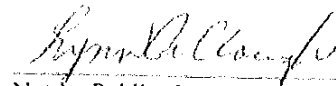
- define how frequently the “regularly scheduled inspections” will be conducted or how properties will be selected for inspection;
- require the inspector to notify building owners and tenants that an inspection is voluntary and cannot be required without a special inspection warrant;
- clarify that either the building owner or the tenant can refuse admittance to the inspector, as both have protected property and privacy rights in the building unit, and does not describe who may consent for multi-tenant property;
- define what type of “code violations” or other alleged violations of local or state law the search is intended to locate;
- identify the amount of the inspection fee or how the fee has a reasonable relationship to the reasonable costs to the municipality; or
- describe who may lawfully make a request for an inspection or a complaint or how a request or complaint will be verified.

11. Beginning on or about September 15, 2016, the City began implementing and enforcing the residential rental contact registration provisions of the Ordinance.

Dated this 12/11 day of January, 2017.

  
Donn Lord

Subscribed and sworn before me  
this 12/11 day of January, 2017.

  
Notary Public, State of Wisconsin  
My commission expires: 11-11-17

- (e) All such facilities shall be so located within the dwelling as to be accessible from a common hall or passageway to all persons sharing such facilities.
- (2) Communal cooking and dining facilities in a rooming house shall be kept by the owner, operator or agent designated in writing, in a safe, sanitary and orderly condition.
- (3) Whenever bed linen and towels are furnished by the operator as part of the rental agreement with a room occupant, the operator shall change the bed linen and towels prior to the letting of the room to the occupant, and at least once a week while the room is occupied, and the operator shall be responsible for the maintenance of all such bedding and towels in a clean condition.
- (4) The occupant or occupants of a room in a rooming house shall be responsible for maintaining the room in a clean condition and ensuring that the smoke detector installed by the owner or operator is checked periodically and is functioning properly. The owner or operator of every rooming house shall be responsible for the maintenance of a clean condition in all communal areas and unoccupied rooms of the rooming house and shall ensure that a smoke detector is installed in each sleeping room, vacant or occupied, and is in working order.
- (5) (a) Every sleeping room shall be of sufficient size to afford at least four hundred (400) cubic feet of air space for each occupant over twelve (12) years of age, and two hundred (200) cubic feet for each occupant under twelve (12) years of age, except that a minimum of one hundred fifty (150) cubic feet may be provided for infants in hospital nurseries. No greater number of occupants than the number thus established shall be permitted in any such rooms.

#### ***DIVISION 5. LEGAL ACTION AND PENALTIES.***

##### **SECTION 16-46 PENALTIES.**

Any person who shall violate any of the provisions of this Article shall upon conviction be punished by a forfeiture of not less than Seventy-five Dollars (\$75.00) for the first offense, One Hundred Twenty-five Dollars (\$125.00) for a second offense within 12 months of conviction or Two Hundred Dollars (\$200.00) for a third or subsequent offense within 12 months of conviction, nor more than Five Hundred Dollars (\$500.00), together with the costs of prosecution, and in default of payment thereof, by imprisonment in the County Jail for a period not to exceed sixty (60) days. Each day of violation shall constitute a separate and distinct offense.

- (A) Smoke Detectors. Notwithstanding the foregoing, any person convicted of violating Section 16-33(A)(7) shall forfeit not less than One Hundred Fifty dollars (\$150.00) for the first offense and not less than Three Hundred Dollars (\$300.00) for the second or subsequent offense within 12 months of conviction, and not more than Five Hundred Dollars (\$500.00), together with the costs of prosecution, and in default of payment thereof, by imprisonment in the County Jail for a period not to exceed sixty (60) days. Each day of violation shall constitute a separate and distinct offense

#### ***DIVISION 6. RESIDENTIAL RENTAL CONTACT REGISTRATION AND INSPECTION PROGRAM***

##### **SECTION 16-47 FINDINGS.**

*Exh. A  
to Aff.*

The Oshkosh Common Council finds that it is necessary to establish a program of regularly scheduled, systematic, city-wide program for the registration and inspection of residential rental dwelling units in the city to ensure that those units provide safe, decent and sanitary living conditions for tenants living in the residential rental dwelling unit and to prevent further deterioration of those units. The Common Council finds that a significant percentage of code complaints and violations occur at residential rental dwelling units and that the conditions which exist at these units adversely affect the neighbors and neighborhoods in which they are located. This ordinance is enacted to encourage property owners who own and operate residential rental dwelling units to exercise their responsibility to ensure that the city ordinances governing the condition and maintenance of residential rental dwelling units are followed to protect the health, safety and welfare of the public and prevent blighted conditions in city neighborhoods.

**SECTION 16-48      RESIDENTIAL RENTAL CONTACT REGISTRATION REQUIRED.**

- (A) The owner of a residential rental dwelling unit located in the City shall record the residential rental contact registration with the Department on the application forms provided by the Department, annually, by September 1st and in the case of any sale, transfer or conveyance of a residential rental dwelling unit within 30 days of any such sale, transfer or conveyance.
- (B) The owner shall provide information on the form which will enable the Department to contact the owner, or at the option of the owner, an agent of the owner, including the street address of the residential rental dwelling unit to be registered and the owner's legal name and telephone number. The owner may voluntarily provide an email address, for the owner or the agent of the owner.
- (C) Each residential rental contact registration is valid from September 1st until the following August 31st and shall be renewed annually. Residential rental contact registration is not transferable.
- (D) The residential rental contact registration does not warrant that the dwelling or dwelling unit is free of any ordinance or code violations or in compliance with any ordinance or code violation.
- (E) There shall be no fee for the residential rental contact registration.
- (F) All Residential Rental Dwelling Units shall be registered prior to occupancy by a tenant.

**SECTION 16-49      RESIDENTIAL RENTAL INSPECTION.**

- (A) As of January 1, 2017, the City of Oshkosh Inspection Services Division will begin a program of regularly scheduled inspections of all residential rental dwelling units located within the City of Oshkosh.
- (B) The Department shall schedule appointments for residential rental dwelling unit inspection. The Department shall provide notice of the date and time of the inspection by first class mail to the tenant and the owner at the address provided in the residential rental contact registration form at least 21 days before the scheduled inspection date. The owner may voluntarily arrange the date and time with the Department and tenants.
- (C) Inspections shall not be conducted:
  - (1) With a minor as the sole representative of the owner.
  - (2) Without prior notice to the tenant by the Department.
  - (3) In an occupied dwelling unit without the owner, owner's agent, or tenant being present.

Should the City not be allowed voluntary admittance to a residential rental dwelling unit, the Chief Building Official may proceed to obtain a special inspection warrant pursuant to Wis. Stat. 66.0119.

- (D) Code violations identified during the residential rental dwelling unit inspection shall be abated within the time ordered by the Department.
- (E) The Department shall charge a fee for the residential rental unit inspection as approved within the fee schedule adopted by the Common Council.
- (F) All properties in the City, including residential rental dwelling units, shall remain subject to inspection requests. The Department shall inspect residential rental dwelling units based on tenant or citizen requests or complaints.

#### **SECTION 16-50 REMEDIES AND APPLICATION OF OTHER PROVISIONS.**

- (A) The remedies provided in this section are not to be construed to be exclusive of any other remedy under the municipal code, and the Department may take further actions to ensure compliance with this section including but not limited to seeking injunctive relief and obtaining inspection warrants.
- (B) Nothing in this section limits, impairs, alters or extends the rights and remedies of persons in the relationship of owner and tenant that exists under applicable law.
- (C) Nothing in this section shall be construed to limit the authority of the Department to perform housing inspections in accordance with this code or enforcing any other provision of state or federal law.

#### **SECTION 16-51 DEFINITIONS.**

- (A) The following definitions shall apply in the interpretation and enforcement of the Residential Rental Contact and Inspection Code:
  - (1) CHIEF BUILDING OFFICIAL. "Chief Building Official" shall include the designee of the Chief Building Official.
  - (2) CITY. "City" shall mean the City of Oshkosh, Wisconsin.
  - (3) DEPARTMENT. "Department" shall mean the City of Oshkosh Division of Inspection Services of the Department of Community Development.
  - (4) DWELLING UNIT: A room or group of rooms providing or intended to provide permanent living quarters for not more than one family.
  - (5) FAMILY. See Section 30-1.
  - (6) OWNER. "Owner" shall mean any person who alone or jointly or severally with others shall be the legally recorded holder of the title with or without actual possession thereof, or who has charge, care or control of any dwelling or dwelling unit as agent or owner or as executor, administrator, trustee or guardian of the estate of the owner. The term "owner" under this Article shall also include the legally recorded holder of a land contract vendee interest.
  - (7) PERSON. "Person" shall mean and include any individual, firm, corporation, partnership or association.



- (8) **RESIDENTIAL RENTAL DWELLING UNIT.** "Residential rental dwelling unit" shall mean a structure or part of a structure, home, residence, or living unit occupied by a single person or family, or any grounds, or other facilities or area occupied for the use of a residential tenant and includes, but without limitation, apartment units and buildings, mobile homes and single and two-family dwellings.
- Residential Rental Dwelling Unit does not include facilities that are inspected, owned, licensed or certified by the State of Wisconsin including rest homes, convalescent homes, nursing homes, hospitals, assisted living centers, community based residential facilities, university-owned student dormitories, or adult family homes.
- (9) **TENANT.** "Tenant" shall mean a person who occupies a residential rental dwelling unit for residential purposes with the landlord's consent for an agreed upon consideration.
- (10) **SALE, TRANSFER OR CONVEYANCE.** "Sale, Transfer, or Conveyance" shall mean to transfer any ownership interest in a dwelling except by mortgage. The sale or transfer shall be deemed to occur upon the transfer of an ownership interest, the recording of a land contract or the exercise of an option to purchase property.
- (11) **MEANING OF CERTAIN WORDS.** Whenever the words "Dwelling," "Dwelling Unit," or "Premises" are used in this Article, they shall be construed as though they were followed by the words "or any part thereof."